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**From:**

**Sent:** Thursday, May 24, 2012 2:15:05 PM

**To:**

**Cc:**

**Subject:** FW: IRC 6325(b)(4) & application of funds --

Hi --sorry about the delays in getting back to you on this one. My reviewer concurs in my response below:

I have also been unable to find anything that specifically addresses how the funds are applied after the Service wins in a section 7426(a)(4) action, but I think the answer must be that the funds should be applied as of the date the district court judgment is final.

Section 6325(b)(4)(C) provides that where no action is filed under section 7426(a)(4) within the period prescribed (120 days), the amount of the deposit is to be applied to the tax liability within 60 days of the expiration of that period. See also 301.6325-1(b)(4)(iv), which further provides that if the appropriate official has not completed the application of the deposit before that 60-day period, the deposit will be deemed to have been applied to the unsatisfied liability as of the 60th day.

It is consistent with this to conclude that, where an action is filed under section 7426(a)(4), the deposit should be applied to the tax liability as of the date it is finally determined that Service is entitled to retain the funds. Whether or not the third party files an action under section 7426(a)(4), the funds should be applied as of the date it is determined that the Service can keep the proceeds: whether that date is after the period to file suit has expired, or after there is a final judgment in the Service's favor.

It would seem inconsistent to take the position that where suit is filed, the funds could be applied as of an earlier date (date of receipt) than if no suit were filed. Further support for this position can be found in the regs. The introductory explanation for the NPRM for the revised 6325, 6503 and 7426 regs (2007-1 C.B. 618) supports concluding that the deposit would not be applied to the taxpayer account until final resolution of judicial action. In particular, there is a discussion of deeming a request for discharge from a third party owner to be a 6325(b)(4) request, rather than a 6325(b)(2) request (unless the third party owner expressly states otherwise). Similarly, an amount received from a third party owner will be deemed a "deposit" under (b)(4)(A) rather than a "payment" of liability under (b)(2), unless the third party in writing expresses otherwise and expressly waives the right to file a 7426(a)(4) suit for refund. This is to protect the third party who would not be entitled to bring the suit if the discharge is under (b)(2).

The intro then states "Amounts paid under section 6325(b)(2) do not constitute deposits and are immediately credited to the taxpayer account once paid by the taxpayer or another person." In other words, distinguishing (b)(2) discharges as a case when the third party funds may be immediately credited to the taxpayer account, unlike (b)(4) deposits.

In a later section of the intro, the Service's use of deposit where a judicial action is not filed is discussed. Regarding the deemed processing of the deposit as of the 60th day after the 120-day period for purposes of applying payments to the taxpayer's accounts, it states "This means that if the IRS has not either applied or refunded any part of the deposit within the 180-day period, the IRS will be prohibited from

charging the taxpayer interest and penalties on an outstanding liability to which the deposit should have been applied under section 6325(b)(4)(C)(i)."

Again, this seems to support the interpretation that the funds are applied to the tax liability at the 180-day period for purposes of accrual of interest and penalties. (If the funds were applied as of the date of deposit, there would be no concerns about deeming the processing to occur at 180 days so the taxpayer can't be charged unnecessary interest and penalties.)

In addition, section 6503(f)(2) looks to 2 dates in determining the cessation of suspension of the CSED under 6325(b)(4) and/or 7426(b)(5): either the earliest date the Service no longer holds an amount in deposit because it has been used to satisfy the liability (or refunded), or the date a judgment under section 7426(b)(5) becomes final. In other words, the suspension of the CSED ends on the date the Service's entitlement to the funds is finally determined. The dates of suspension of the CSED should be consistent with the dates the funds are applied to the tax liability. In other words, the statute should be suspended pending application of the funds to the taxpayer account. The date the suspension should end should be the date the Service has applied the funds to the tax liability. Section 6503(f)(2) provides this is the date a judgment becomes final.

Let me know if you have any further questions.